IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7049 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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NATVERLAL DHULABHAI DAVE

Versus

BEHRA MUNGA SHALA SOCIETY, AHMEDABAD,

Appearance:

1. Special Civil Application No. 7049 of 2001

MR YATIN SONI for Petitioner No. 1-8

MR SUNIT S SHAH for Respondent No. 1

MR SIRAJ GORI ASSTT GOVT PLEADER for Respondent No. 2-3

RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 24/07/2002

ORAL JUDGEMENT

1. The petitioner Nos.1 to 5, 7 and 8 are working as Gruh Pati and Gruh Mata [Warden] with respondent No.1

and the petitioner No.6 is as Watchman working with the respondent No.1 which is grant-in-aid institution running a residential school for physically impaired students who are deaf and dumb. The petitioners were being paid house rent allowance till June, 2001. By virtue of communication from Director of Social Welfare Annexure-C with effect from 1-4-1991 and by communication dated 27th July, 2001 - Annexure-F, the Director, Social Welfare directed the respondent No.1 to revise and prepare pay bills without paying H.R.A.. The petitioners are aggrieved by this action on part of the respondent No.2 and have therefore approached this Court with this petition praying for grant of following main reliefs;

"11. The petitioners, therefore, pray that :

11.1 This petition may be admitted and allowed.

11.2 By issuing appropriate writ, order or direction, direct the respondents not to implement and execute letter dated 27-7-2001 issued by the respondent No.2 herein and direct the respondents to pay H.R.A. benefits regularly to the petitioners and direct the respondents to pay the H.R.A. benefits which are not paid to the petitioners since stopped.

11.3 Pending hearing and final disposal of this petition the respondents be directed to pay the H.R.A. benefit to the petitioners regularly and stay the operation and implementation of the letter dated 27-7-2001 issued by the respondent No.2 herein.

11.4 Any other and further relief deemed just, fit and proper may also be kindly granted."

2. Heard learned advocate Mr.Yatin Soni for the petitioners and Mr.Shah, learned advocate for respondent No.1, so also Mr.Siraj Gori, learned AGP for other respondents.

3. Mr.Soni, learned advocate for petitioners has submitted that the order in question - Annexure-F is passed by the respondent No.2 which is detrimental to the interest of the petitioners and no audience is given to the petitioners. By communication from respondent No.2 to respondent NO.1 - Annexure-C, the petitioners have been paid house rent allowance since 1-4-1991. Before withdrawing this benefit, they ought to have been

afforded an opportunity of being heard. Mr.Soni, learned advocate therefore submits that this is clear case of violation of principles of natural justice.

4. On the other hand, learned AGP Mr.Gori has submitted that there is no question of affording any audience to the petitioners as the petitioners are serving in an institution where physically impaired students are being educated and are provided lodging and boarding. The students are deaf and dumb and need special attention. Therefore, constant presence of Gruh Mata and / or Gruh Pati is a must. The respondent No.1 is expected to provide residential accommodation to the employees. It is also contended by Mr.Gori that the petitioner No.6 who is Watchman, expected by the authority to be available in the premises itself. However, the respondent No.1 has failed to provide residential accommodation and has even denied to do so and therefore, H.R.A. to the employees is stopped and there is no question of giving any hearing to the petitioners. Learned AGP Mr.Gori has submitted that the respondent No.1 institution has its own premises and receives grants to the tune of Rs.1,18,110/- per annum by way of rent. It has sufficient funds and despite this, it is shirking from the responsibility of providing residential accommodation to the petitioners. The petitioners and respondent No.1 are hands in a glove and acting against the respondent Nos.2 & 3 and ultimately, want to derive undue benefit of the situation. Mr.Gori, learned AGP therefore submits that this petition may not be entertained and the same be dismissed accordingly.

5. There is no dispute about the fact that the respondent No.1 is grant in aid institution. There is also no dispute that the petitioners are employees of that institution. It is also very clear from Annexure-C that it was decision of the respondent No.2 to pay house rent allowance to the employees of the respondent No.1 Institution and accordingly, the petitioners are receiving house rent allowance. It is also not disputed that benefit of house rent allowance is withdrawn by the respondent No.2 vide communication dated 27th July, 2001 effective from 1st June, 2001 and that said decision is taken and direction is given without affording an opportunity of hearing to the petitioners, although, that decision directly affects interest of the petitioners.

6. What transpires from the contentions raised in the affidavit and further affidavit-in-reply and the submissions made at the Bar on behalf of the respondent

Nos.2 & 3 is that respondent Nos.2 & 3 have some grievances against respondent No.1. According to the respondent Nos.2 & 3, the respondent No.1 is bound to provide accommodation to its employees which is not being done and therefore, it appears that by way of coercive measure, this step is taken. There is nothing on record to indicate that before allocating the grant, some such conditions were agreed upon between the respondent No.1 and respondents Nos.2 & 3. Even if it is so, decision could not have been taken by the respondent No.2 unilaterally to the detriment of the petitioners without giving them an audience. Decision taken to give HRA from 1-4-1991, could not have been changed without hearing the petitioners. In above view of the matter, the impugned order Annexure-F deserves to be quashed and the same is quashed. The petition is therefore allowed. The impugned communication dated 27th July, 2001 bearing No.HSB-DP Cell - 2000 - 1 passed by the respondent No.2 is hereby quashed. The petitioners shall be paid the arrears of H.R.A. forthwith but not later than 31st August, 2002. The petitioners shall also be paid H.R.A. regularly henceforth as is being done since 1-4-1991 as per communication Annexure-C. The petition is accordingly allowed. Rule is made absolute. No costs.

7. It is, however, clarified that this order will not come in the way of the respondent authorities from taking appropriate decision with regard to the payment of H.R.A. to the petitioners as per Rules and Law after following due procedure of law. Direct Service is permitted.

Date : 24-7-2002 [A.L.Dave, J.]

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